IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4856 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANJAY BHUPENDRABHAI PATEL

Versus

CHIEF REVENUE CONTROLLING AUTHORITY

Appearance:

1. Special Civil Application No. 4856 of 1999

MR NIMESH PARIKH for MR SATISH R PATEL for Petitioner

Ms NANDINI JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/08/2001

ORAL JUDGEMENT

Rule. Ms Nandini Joshi, learned AGP waives service of Rule for the respondents.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 23.9.1997 (Annexure "B") passed by the Chief Controlling Revenue Authority in Appeal No. 223 of 1997 and also the notice

dated 12.3.1999 issued by the Deputy Collector & Ex-Officio Recovery Officer (Stamp Duty & Registration Fee), Bharuch under Section 200 of the Bombay Land Revenue Code, 1879.

3. The petitioner purchased a parcel of non-agricultural land admeasuring 1 Acre bearing Survey No. 103 in village Nougam, Taluka Zagadia in Bharuch District. The document was executed on 3.5.1990 for a consideration of Rs.60,000/- as stated in the document. The Deputy Collector issued notice dated 13.2.1992 calling upon the petitioner to show cause why the market value of the property should not be determined at Rs.4,50,000/-. The petitioner submitted his reply dated 29.9.1992 pointing out various defences. The Deputy Collector passed order dated 11.3.1992 (Annexure "A") calling upon the petitioner to pay additional stamp duty of Rs.33,896/- plus penalty of Rs.250/-. The petitioner thereafter filed the appeal before the Chief Controlling Revenue Authority which was entertained on merits and thereafter the Chief Controlling Revenue Authority dismissed the appeal by the impugned order dated 23.9.1997. The said order was followed by the recovery notice under Section 200 of the Bombay Land Revenue Code and, therefore, this petition.

4. Mr Parikh, learned counsel appearing for the petitioner submitted that the petitioner was not given a reasonable opportunity of being heard and there was flagrant violation of provisions of Rule 4(2) of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984 which reads as under :-

"4. Procedure to be followed by the Collector for determining the true market value of the property which is the subject matter of the instrument :-

(1) ... ...

(2) After examining the said information, records and evidence, if any, before him Collector of the District shall issue a notice showing the basis on which true market value of property and proper duty payable thereon has been provisionally determined by him, to every person to whom according to the provisions of Section 30 is liable to pay stamp duty in respect of such instrument requiring such person to submit within 15 days from the date of the service of the notice upon such person, his representation in

writing alongwith all the evidence in support of such representation."

It is submitted that in the instant case, the show cause notice did not contain any basis as per which the Deputy Collector had determined the tentative market value of the property and, therefore, the petitioner did not have an effective opportunity of being heard because the petitioner was not informed by the authorities as to what had weighed with the Deputy Collector which the petitioner was expected to dislodge.

Mr Parikh next contended that the non-application of mind while issuance of show cause notice was further borne out by the order dated 11.3.1992 passed by the Deputy Collector where all that was mentioned was the amount of additional stamp duty but even the market value of the property as determined by the Deputy Collector was not indicated in the subsequent order dated 11.3.1992.

5. On the other hand, Ms Nandini Joshi, learned AGP appearing for the respondents vehemently opposed the petition and submitted that the show cause notice did mention that the Deputy Collector had taken into consideration the value of the adjoining properties. It was further submitted that there was gross delay on the part of the petitioner in filing the appeal before the Chief Controlling Revenue Authority and that even after the impugned order was passed by the Chief Controlling Revenue Authority, there is delay in filing this petition.

6. Having heard the learned counsel for the parties and having regard to the principles laid down by the Division Bench of this Court in the order dated 26.7.1999 in Special Civil Application No. 1731 of 1999, it is obvious that while issuing notice under Rule 4(2) of the aforesaid Rules, the Deputy Collector was required to show the basis on which the market value of the property was provisionally determined. As usual, the Deputy Collector has not filled in the space earmarked for showing the basis for determining provisional market value of the property. The show cause notice mentioned the words `pachhal mujab' (please turn over). However, the next page of the show cause notice merely indicates the tentative market value determined and the additional stamp duty required to be paid. The notice did not show any basis whatsoever except stating "having regard to the value mentioned in the documents pertaining to other properties", but no particulars of the other properties

were given. In this view of the matter, there is substance in the contention urged on behalf of the petitioner that in absence of the basis indicated in the show cause notice, the petitioner was not in a position to find out as to on what basis the Deputy Collector had determined the provisional market value of the property. It is, therefore, clear that the show cause notice was illegal and the final order passed by the Deputy Collector as well as the appellate order passed by the Chief Controlling Revenue Authority must fail with the show cause notice.

8. Even the final order dated 11.3.1992 passed by the Deputy Collector, Bharuch (Annexure "A") shows length to which the Deputy Collector had gone in passing the order. Even though the show cause notice required the petitioner to pay additional stamp duty of Rs.42,120/-, the final order required the petitioner to pay additional stamp duty of Rs.33,896/- but the blank regarding the value of the property was not filled in. This is also a relevant consideration and ground for quashing and setting aside the order of the Deputy Collector.

9. It is true that there was delay in filing the appeal before the Chief Controlling Revenue Authority, but when the Chief Controlling Revenue Authority itself entertained the appeal on merits, there is no reason why this Court should dismiss the petition only on the ground of delay in filing the appeal before the Chief Controlling Revenue Authority.

10. As regards the contention that there is delay in filing the present petition, it is true that the petition is filed after a period of one and a half year. The order appears to have been despatched in December, 1997 although it purports to have been passed on 23.9.1997. It is a settled legal position that the writ jurisdiction is discretionary and that there is no fixed period of limitation stipulated in the Constitutional provisions within which the petitioner should approach this Court. Every case is to be decided in the facts and circumstances of that particular case. In the instant case, the show cause notice as well as the order passed by the Deputy Collector are found to be in clear breach of the statutory provisions. The Division Bench of this Court has also deprecated the manner in which the notices are issued by the authorities and the orders are passed. The appellate authority has also passed the order mechanically without indicating any application of mind except stating that the amount of additional stamp duty demanded in the show cause notice has been reduced in the

final order. In this set of circumstances, this Court is not inclined to dismiss the petition only on the ground that the petitioner approached this Court after about a year and a half from the date of communication of the order of the Chief Controlling Revenue Authority. Moreover, the petitioner is also saddled with liability to pay interest and, therefore, if pursuant to the order of remand, whatever additional stamp duty is demanded by the authority, the petitioner's liability to pay interest thereon will continue to run. In these circumstances, no prejudice is going to be caused to the respondents by entertaining this petition on merits.

11. The petition is accordingly allowed. The orders at Annexures "A" and "B" are hereby quashed and set aside. The matter is remanded to the Deputy Collector (Stamp Duty Valuation) for issuing a fresh show cause notice to the petitioner in compliance with Rule 4(2) of the Rules within two months from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier and thereafter to give the petitioner an opportunity of being heard and then decide the matter in accordance with law.

Rule is made absolute to the aforesaid extent with no order as to costs.

12. It goes without saying that the amount of stamp duty deposited by the petitioner with the Deputy Collector at the time of filing the appeal before the Chief Controlling Revenue Authority will be given due credit as and when the Deputy Collector passes a fresh order after giving the petitioner an opportunity of being heard.

(M.S. Shah, J.)
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